

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

MAR 24 2006

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY AS DEPUTY

KEITH ALLEN MILLER,

Petitioner,

vs.

ERIC FRANKLIN,

Respondent.

No. CIV-06-101-W

ORDER

On February 3, 2006, United States Magistrate Judge Doyle W. Argo issued a Report and Recommendation in this matter and recommended that the Petition for Writ of Habeas Corpus ("Petition") filed by petitioner Keith Allen Miller be dismissed upon filing. Miller was advised of his right to object, and the matter now comes before the Court on Miller's timely-filed "Objections to the Findings and Recommendations."

Upon de novo review of the record, the Court concurs with Magistrate Judge Argo's suggested disposition of this matter. The Court finds this action as to Grounds One through Eight set forth in Miller's Petition and that portion of Ground Nine that challenges Oklahoma's appellate procedures to be untimely under title 28, section 2244(d)(1)(A) of the United States Code. The Court further finds that Miller is entitled to neither statutory tolling under title 28, section 2244(d)(2) of the United States Code, nor equitable tolling in the absence of "rare and exceptionable circumstances." Gibson v. Klinger, 232 F.3d 799, 808 (10th Cir. 2000)(quoting Davis v. Johnson, 158 F.3d 806, 811 (5th Cir. 1998).

The Court has also examined that portion of Ground Nine that challenges Oklahoma's post-conviction procedures and in so doing, assuming arguendo that such

claim is timely-filed, the Court finds that Miller's challenge fails to state a claim for the deprivation of a constitutional right that is actionable in a federal habeas proceeding. E.g., Steele v. Young, 11 F.3d 1518, 1524 (10th Cir. 1993). Accordingly, this portion of Ground Nine as well as all other grounds for relief set forth in Miller's Petition should be summarily dismissed.

Based upon the foregoing, the Court

(1) ADOPTS the Report and Recommendation issued on February 3, 2006; and

(2) DISMISSES Miller's Petition upon filing.

ENTERED this 24th day of March, 2006.

A handwritten signature in black ink, appearing to read 'Lee R. West', is written over a horizontal line.

LEE R. WEST
UNITED STATES DISTRICT JUDGE